

Department of Defense Office of the Inspector General



Military Whistleblowe r Reprisal



Point of Contact



Chief, Military Whistleblower & Reprisal
Department of Defense, Office of the
Inspector General
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703-604-8516
DSN: 332-8516



Enabling Learning Objectives (ELO)



Enabling Learning Objectives:



- Identify the categories of protected employees and responsible agencies.
- Identify the reporting requirements upon receipt of a whistleblower reprisal complaint and upon completion of a preliminary analysis or investigation.
- Describe the four questions of the “Acid Test.”
- Describe how to apply the “Acid Test” properly to determine if complaint meets the criteria for investigation



Objectives



- Provide an overview of military whistleblower reprisal statutory protections
- Update policies and procedures for investigating reprisal and mental health evaluation (MHE) complaints
- Share information among DoD and Service component investigators





MRI Mission

- Investigate and perform oversight on allegations of reprisal against military members, Defense contractor employees, and nonappropriated fund employees
- Investigate or oversee allegations that military members were improperly referred for MHEs without procedural rights
- Investigate allegations of administrative improprieties in all areas of DoD programs and operations



Reprisal Statutes and



■ Whistleblower Reprisal



- Military Members

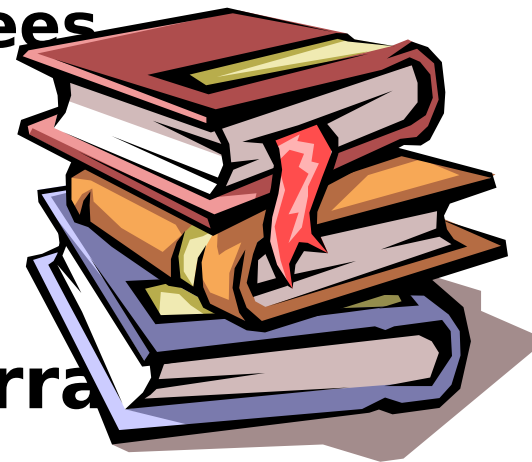
10 U.S.C. 1034, DoDD 7050.6, and IGDG 7050.6

- Nonappropriated Fund Employees

10 U.S.C. 1587 and DoDD 1401.3

- Defense Contractor Employees

10 U.S.C. 2409, FAR, Subpart 3.9



■ Improper Mental Health Referral (Military Members only)

DoDD 6490.1 and DoDI 6490.4

Appropriated Fund Employees: Office of Special Counsel



10 U.S.C. 1034



Prohibits the restriction of, or retaliatory personnel actions against, Members of the Armed Forces for making or preparing to make lawful communications to Members of Congress, Inspectors General, members of a DoD audit inspection, investigation, or law enforcement organization; or any other person in the chain of command; or any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.





What Is Reprisal?



When a responsible management official takes (or threatens to take) an unfavorable personnel action or withholds a favorable personnel action from a service member because he/she made or was thought to have made a protected communication.



***Combatant Command and Joint
Inspector General Orientation Course***



History of Whistleblower Protection



1978 - Civil Service Reform Act
Whistleblower protection for federal employees

A. Ernest Fitzgerald

USAF civilian management systems deputy testifies before Congress 1968 about \$2 billion cost overrun on C-5A program; fired on orders from Nixon White House (reinstated in 1982)





History of Whistleblower Protection



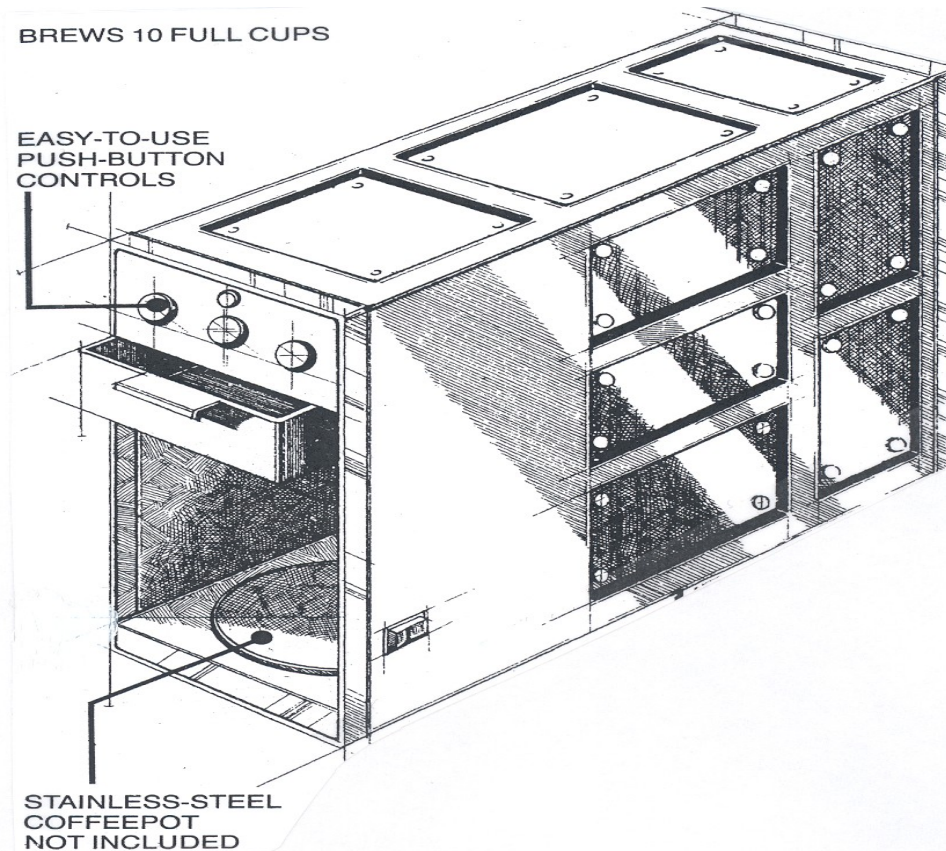
- 1983 – Coverage for non-appropriated fund employees
- 1986 – Coverage for defense contractor employees





History of Whistleblower Protection

- Mid 1980s - \$7600 coffee brewer



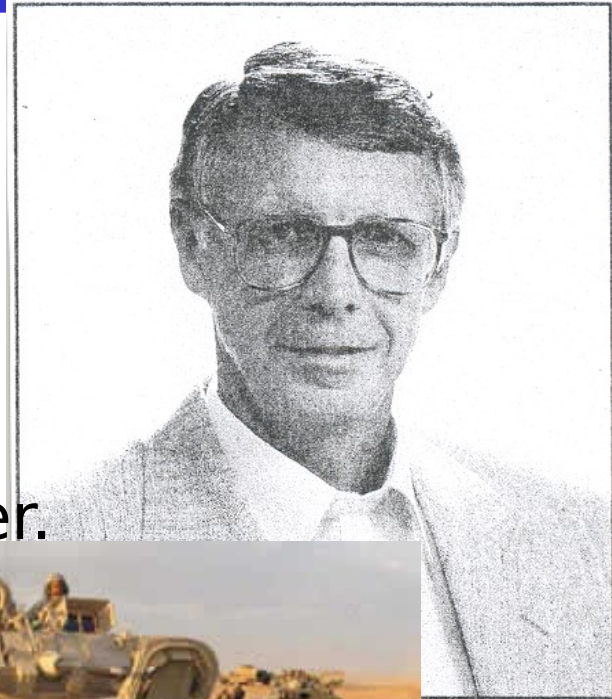


History of Whistleblower Protection



1985 – COL James Burton, USAF

Reported to Congress that the M-2 Bradley IFV was not being rigorously and realistically tested. Threatened with transfer to Alaska. Congress intervened to stop transfer.





History of Whistleblower Protection



- **1988 - Boxer “Military Whistleblower Protection Act” enacted as part of FY-89 Authorization (10 U.S.C. 1034). Act only protects communications with IGs and Congress.**
- **1990/1992 - 10 U.S.C. 1034 expanded to prohibit MHE as reprisal.**
- **1991 - 10 U.S.C. 1034 amended to also protect communications made to auditors, criminal investigators, inspectors, and law enforcement officials.**



History of Whistleblower Protection

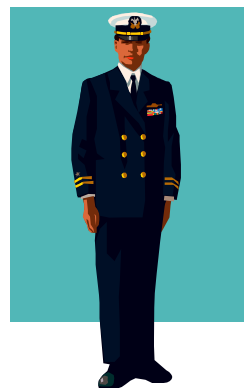
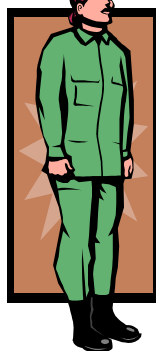
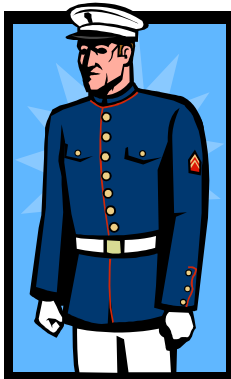


- **1994 - 10 U.S.C. 1034 amended to protect communications made to designated entities, including those in the chain of command, and communications regarding discrimination or sexual harassment.**
- **1998 - 10 U.S.C. 1034 amended to give DoD IG and Service IGs the authority to conduct a preliminary analysis to determine if sufficient evidence exists to warrant an investigation.**



What's Next?

**2004 Amendment to 10 U.S.C. 1034
will protect communications made to
any person or organization in a
service member's *chain of command*.**





Previously...

“...any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures” to receive protected communications.



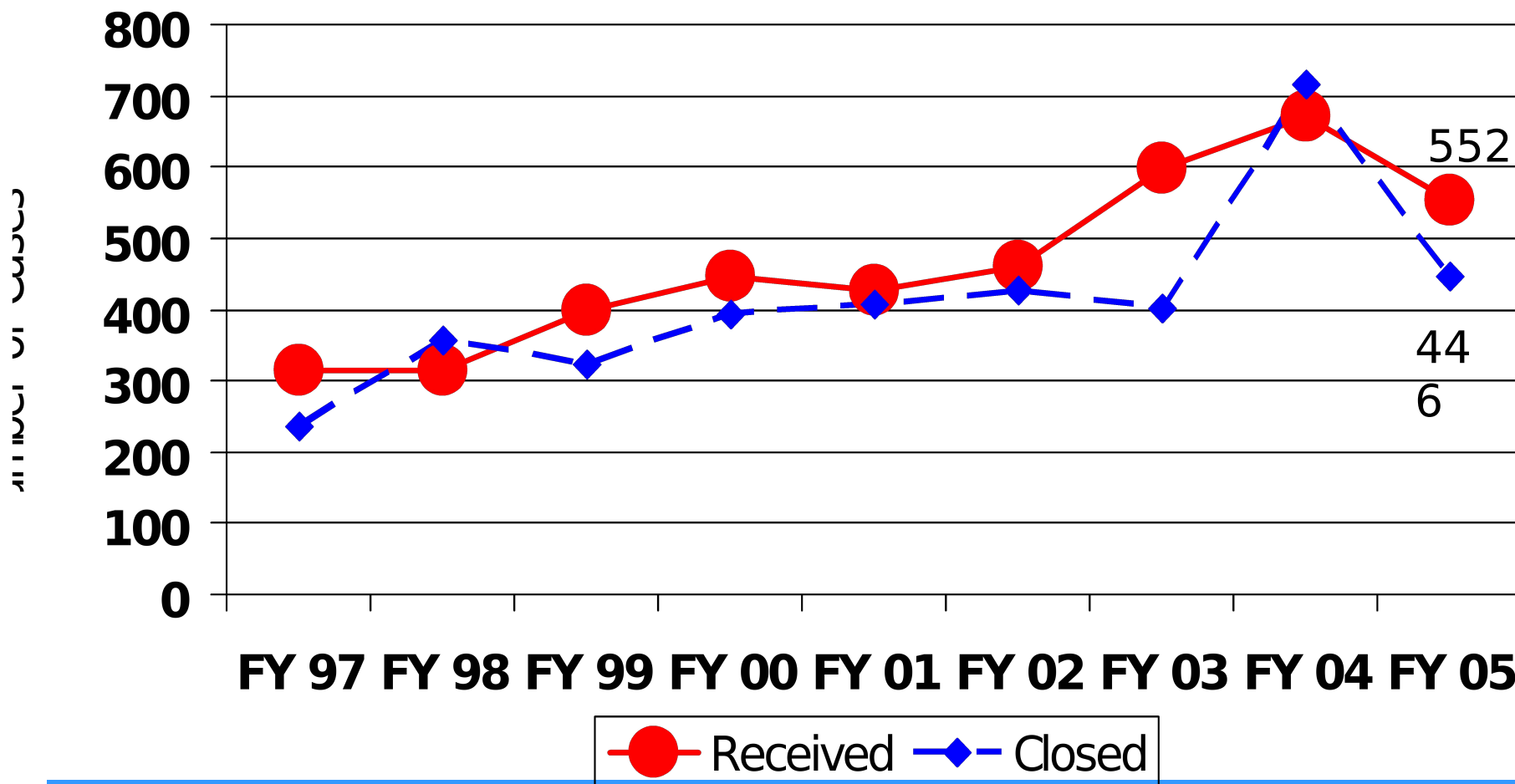
Presently...

a) “...any person or organization in the chain of command; or

b) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications”



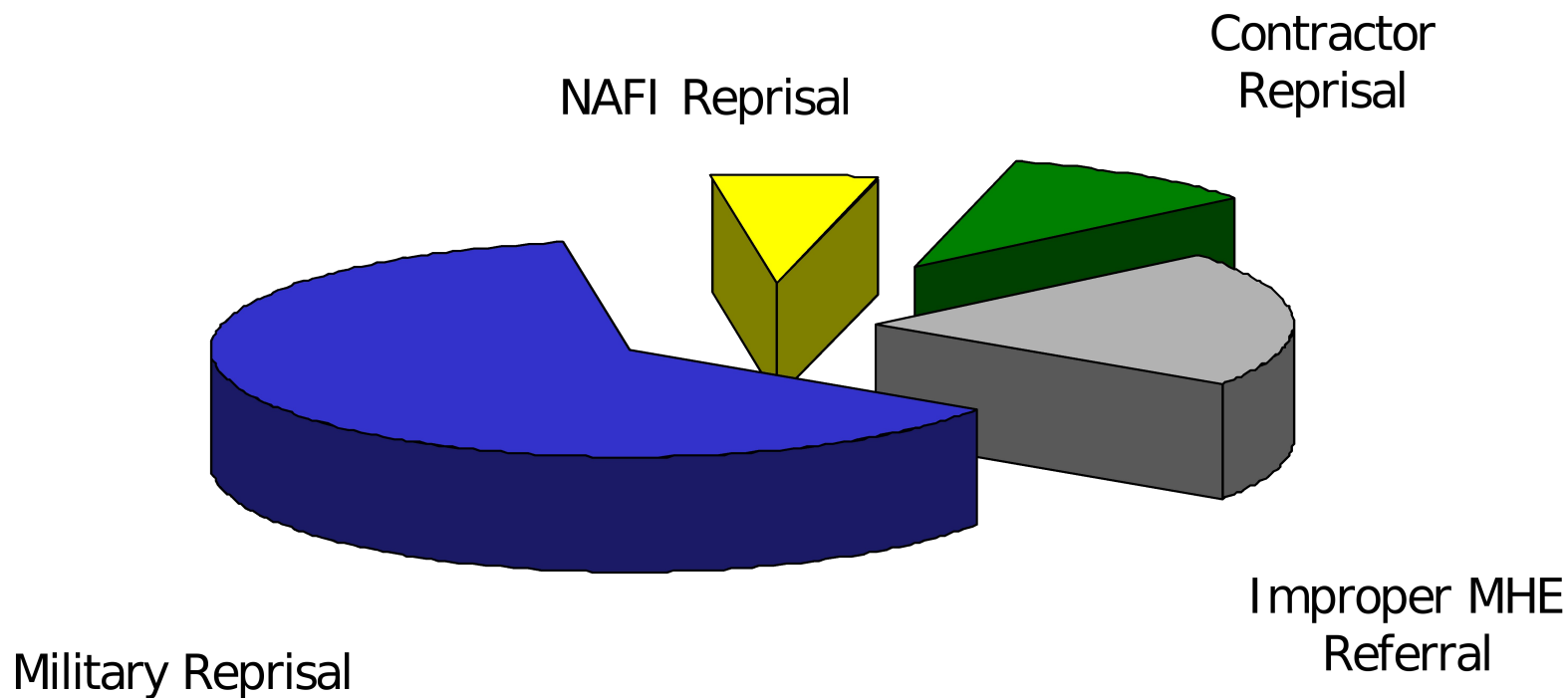
DoD Whistleblower / MHE Case History



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Types of Complaints - FY 05



Note: Derived from FY 05 MRI closed statistics.

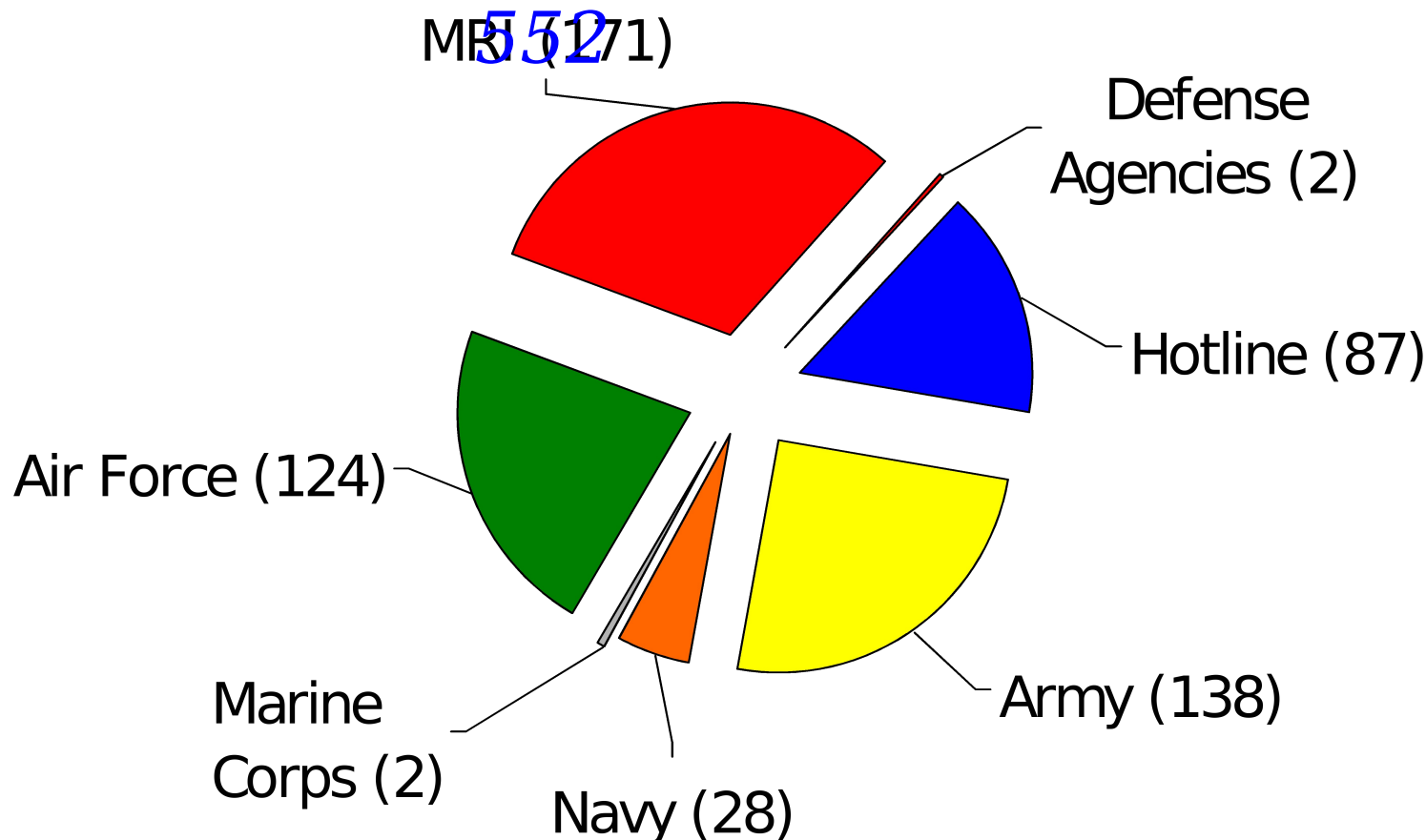
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DoD Reprisal / MHE Cases Received - FY 05

Total Cases:

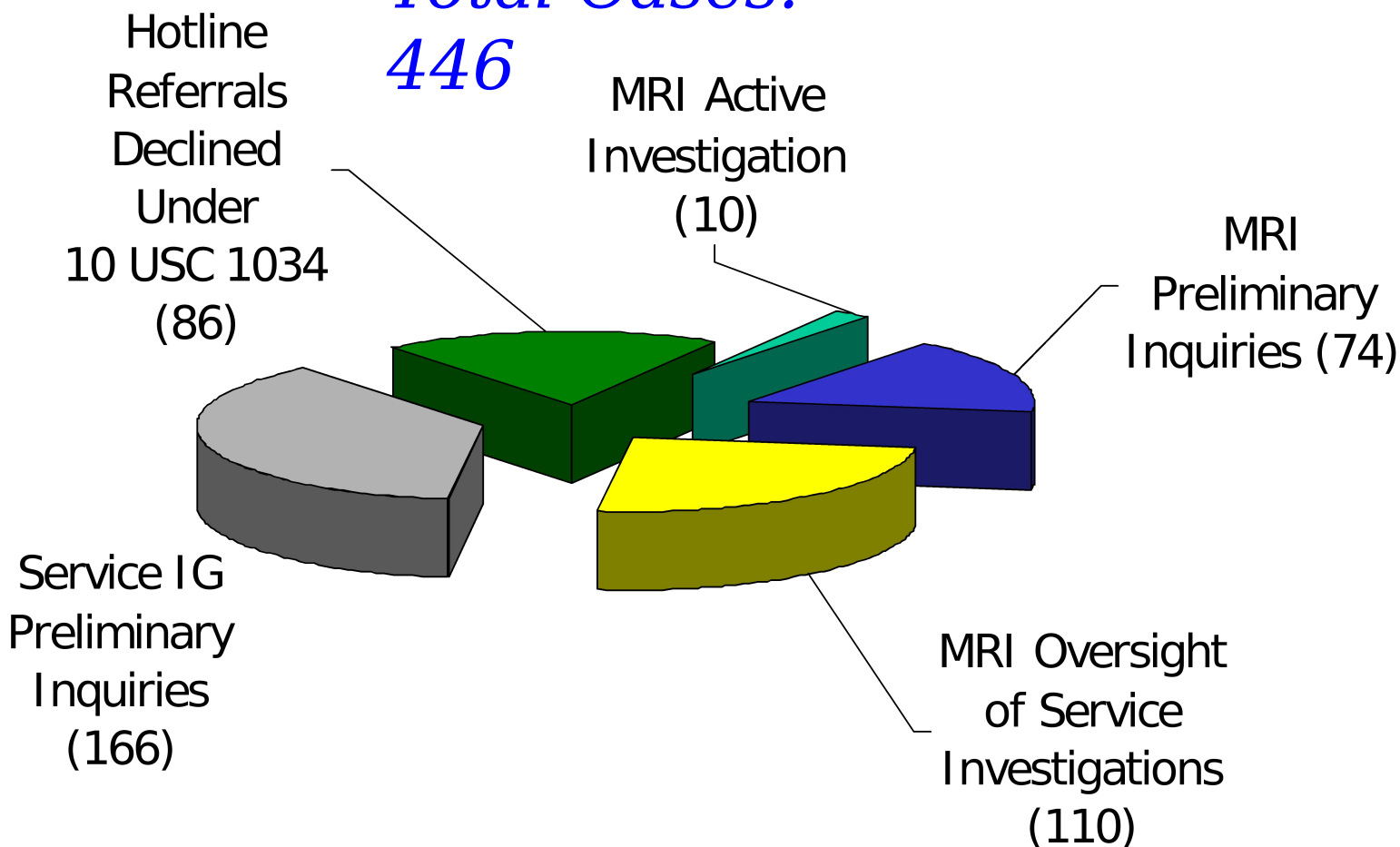
552





DoD Reprisal / MHE Cases Closed - FY 05

Total Cases:
446





DoD Reprisal / MHE Case Substantiation Rate - FY 05



- **Allegations of whistleblower reprisal were substantiated in approximately 15% of the cases**
- **Allegations of improper mental health evaluation referrals (procedural violations) were substantiated in 49% of the cases**

Note: The substantiation rate shown above for whistleblower reprisal cases is based on those cases that met the statutory criteria for full investigation.

Department of Defense Office of the Inspector General



The Investigative Process



Receiving Reprisal Allegations



**Notify DoD IG within
10 days of receiving
complaint of reprisal
or improper MHE**



Fax # (703) 604-8542



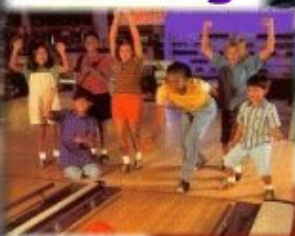
Receiving Reprisal Allegations- Non-service members



**Amusement
Machines**



Bowling



Marinas



Cabins & RV Parks



Golf



- **Non-appropriated Fund Employees**
- **Defense Contract Employees**
- **Appropriated Fund Employees**
 - **Office of Special Counsel (OSC)**
 - **Civilian Reprisal Investigations**
(703) 604-8807

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Military Whistleblower “Protection”



- IG DoD has oversight responsibility for all DoD military reprisal and referral for mental health evaluation allegations
- **Service Members have the right to appeal to the Secretary of Defense (via their BCMR)**





Timeliness



"IG is not required to make an investigation . . . in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation."

--- policy is to extend statutory protections to 120 days. Extenuating circumstances are considered on a case by case basis.



Four Questions



- Protected Communication?
- Unfavorable Personnel Action?
- Responsible Management Official (RMO) Knowledge?
- Reprisal or Independent Basis for Action?

Also known as the “acid test”



The Preliminary Inquiry

- Questions 1-3
 - Based mostly on existing documentation
 - Determination that does not meet the criteria or insufficient evidence to investigate
 - Normally do not interview responsible management officials or witnesses
 - Legal review not required
-



Investigation



- Questions 1- 4
 - Based documentation and testimony
 - Finding of whether linkage between the PC and unfavorable actions existed
 - Interviewed all responsible management officials and witnesses
 - Full legal review
-



Summary

- Overview of DoD Military Whistleblower Reprisal Program
 - History
 - Who's covered?
 - What are the guiding statutes and regulations?
 - What are the protections?
 - IG Responsibilities

- “Acid Test” for investigations

Question One:



**Did the military
member make,
prepare to make, or
was thought to have
made a communication
protected by statute?**





10 U.S.C. 1034 specifically:



Prohibits the restriction of, or the taking of retaliatory personnel actions against, Members of the Armed Forces for making or preparing to make lawful communications to:

- Congress or IGs;
 - Members of a DoD audit, inspection, investigation, or law enforcement organization; and
 - Any person or organization in the chain of command; or any other person or organization organization designated pursuant to regulations or other established administrative procedures for such communications”
-



Protected Communications



Two criteria to determine if a complainant's communication is protected:

Who received the communication?

What was the content of the communication?



Protected Communication



Lawful communication to:

Inspector General

Member of Congress

Does not have to disclose information
concerning wrongdoing



Protected Communication



Lawful communication to:

- Members of a DoD audit, inspection, investigation, or law enforcement organization
- any person or organization in the chain of command; or any other person or organization designated pursuant to regulations or other established administrative procedures for such communications”

Must convey the following:



Protected Communication



A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, (includes EO issues), gross mismanagement, an abuse of authority, a gross waste of funds or resources, or a substantial danger to public health or safety, ...



Protected Communication



Protected communications may be:

- Verbal, written or electronic (phone, fax, E-mail)
- Communications made by a third party (spouse, relative or co-worker) on behalf of complainant

- Chain of command communications

May include complaints made during commander's call,

request mast, or under open door policy. Articles 138 and 1150 are usually protected communications.



Protected Communication



Timing:

Actual date that the communication occurred (or believed to have occurred) is critical

- Date rumors started about complainant intending to make a protected communication
- Date complainant began preparing to make a protected communication
- Date the actual protected communication was made



Questions for the Complainant



- To whom did you make your protected communication? When (date) and why?
 - Did you discuss your protected communication with anyone before you actually made it? If so, who, when, and why?
 - Was anyone else present? If so, who and why.
 - Did anyone know you were making or going to make a protected communication?
-



Protected Communication?

- Ensign Scotty announced at a recent Commander's Call that his supervisor discriminated against him because of his religious beliefs.
- A1C Kirk's commander believes she was the source of an anonymous call to the IG (however, A1C Kirk denies she ever contacted the IG).





Protected Communication?



- Lieutenant Traveler's mother wrote the Hotline complaining that her son would be deployed to Kosovo on her birthday and he would be unable to attend her birthday celebration.
 - LCpl Sweettooth wrote to his Congressman complaining that the lunch line at the unit dining facility was too long and by the time he got to the desserts, the pecan pie was always gone.
-





Protected Communication



Remember: For each protected communication you must determine:

- To whom was it made?
- What was the protected communication?
- When was it made?
- Disposition of communication



Protected Communication



What if...

- *No evidence of a protected communication?*
- *Allegation of wrongdoing was not substantiated*
- *Protected communication was made in retaliation against management officials?*



Summary

- Definition of a protected communication
 - Recipient
 - Content

- Questions?

Question Two:



Was an unfavorable personnel action taken or threatened or was a favorable personnel action withheld or threatened to be withheld following the protected communication?





Unfavorable Personnel Action



What is an unfavorable personnel action?

Any action that affects,
or has the potential to affect,
a Service member's position or career.



Unfavorable Personnel Actions



- Fitness Report/Performance Evaluations
- Transfer or reassignment
- Changes to duties or responsibilities
- Disciplinary or other corrective actions
(Page 13, Article 15, Captain's Mast)



Unfavorable Personnel Actions



- Denial of reenlistment or separation
- Decisions about awards, promotions or training
- Decisions concerning pay or benefits
- Referrals for mental health evaluation



Unfavorable Personnel Actions



Investigations (fact finding tools) are not considered adverse actions

However, actions taken as a result of an investigation may be considered adverse action(s)



Unfavorable Personnel Actions



- Revocation of:
 - access to classified material
 - authorization to carry weapons
 - changes in flying status
 - Personnel Reliability Program certification

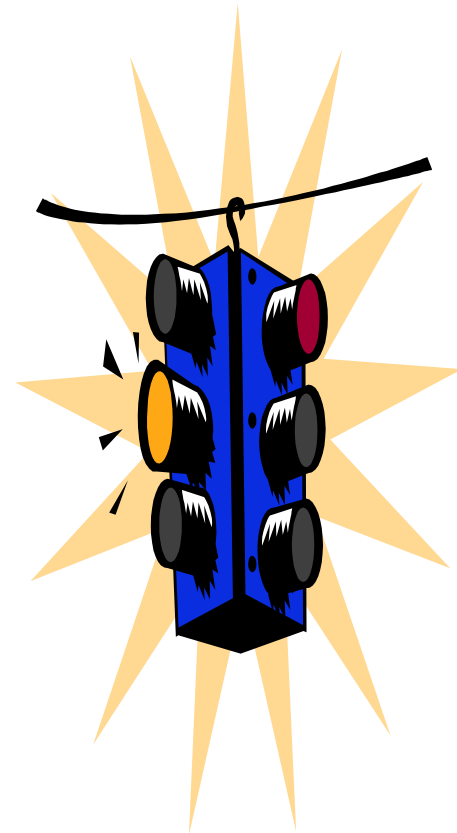
Key: Was the action discretionary?



Unfavorable Personnel Action ?



- Lieutenant Commander Star claims his Fitness Report had all top level ratings; however, the report did not contain the key "hard charging" words.
- Master Sergeant Strack was scheduled to attend the Academy. Following an investigation, she received disciplinary action, including a suspended reduction in grade. Subsequently, she was denied attendance to the Academy.





Unfavorable Personnel Action?



What if...

- *responsible official did not consider the personnel action to be "adverse"?*
 - *personnel action was subsequently reversed?*
 - *there was no personnel action?*
-



Summary

- Definition of an unfavorable action
 - Threat vs. action taken
 - Potential to affect career

- Questions?

Question Three:



**Before taking or threatening
an unfavorable personnel action,
did the responsible management
officials (RMO) know about the
protected communication?**





RMO Knowledge



Two step process:

- Determine who is a responsible management official (RMO)
- Determine if each responsible official had prior knowledge of each protected communication



Who is a RMO?



Anyone who:

- Influenced or recommended the action be taken
 - Made the decision to take the action
 - Signed correspondence regarding the action
 - Approved, reviewed, or endorsed the action
-



RMO Knowledge



- Establish
 - **when the responsible officials knew**
 - **what the responsible officials knew**
 - **how did responsible officials find out**
 - **did anyone else know the officials knew**
- May also need to determine:
 - **when considered taking the action**
 - **initiated the action**
 - **completed the action**



RMO Knowledge



Knowledge includes:

- Personally received the protected communication
 - Heard rumors about the protected communication
 - Suspected or believed the complainant made a protected communication (even if not true)
 - Precise knowledge of content of protected communication is not necessary.
 - Simply being aware protected communication occurred (regardless of the subject or content) is sufficient.
-



Questions to Establish Knowledge



Ask complainant:

- "Who do you believe is responsible for the unfavorable action?"
- "Why do you believe they knew you made a protected communication before taking the unfavorable action?"
- "Who did you tell about making or preparing to make a protected communication?"



Questions to Establish Knowledge



Ask complainant:

- "When did you hear that responsible official(s) knew about your protected communication?"
 - "Did anyone tell you that they overheard any of the responsible official(s) discussing your protected communications?"
 - "Who can testify/provide documents to support your allegation that responsible official(s) knew of your protected communication?"
-



Questions to Establish Knowledge



Ask witnesses:

- "What do you know about the complainant's protected communication, and when did you find out?"
- "Did you tell anyone else about the complainant's protected communications, and if so, when?"



Questions to Establish Knowledge



Ask witnesses:

- "Do you believe the responsible official(s) knew about the protected communications before they took the unfavorable personnel action? Why?"
- "Who else might have information supporting your statement that responsible official(s) knew/did not know about the protected communications?"



Questions to Establish Knowledge



Ask each RMO:

- "When and how did you first become aware of the complainant's protected communications?"
- "When and how did you first come to believe or suspect the complainant may have made (or intended to make) a protected communication?"



Questions to Establish Knowledge



Ask each RMO:

- "Did you discuss the complainant's protected communications with anyone, and if so, who, when, and why?"
- "Who can testify/provide documents to support when you first knew about the complainant's protected communication?"



RMO Knowledge



What if...

- Responsible officials deny having any knowledge of the protected communications?
 - No documentary evidence or corroborating witness testimony that the responsible officials knew?
-



DOUBT?



*If there is any doubt or uncertainty
whether responsible officials knew
about the protected communication --
give the complainant the
benefit of the doubt,
and proceed.*



Summary

- Who is a responsible management official?
- What constitutes knowledge?
- Questions?

Department of Defense Office of the Inspector General

The Investigative Process





Receiving Reprisal Allegations



**Notify DoD IG within
10 days of receiving
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Fax # (703) 604-8542



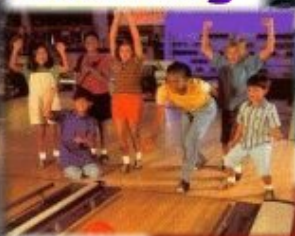
Receiving Reprisal Allegations- Non-service members



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Four Questions



- Protected Communication?
- Unfavorable Personnel Action?
- Management Knowledge?
- Reprisal or Independent Basis for Action?

Also known as the “acid test”



Preliminary Inquiry



- Questions 1-3
 - Based mostly on existing documentation
 - Determination that does not meet the criteria or insufficient evidence to investigate
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Investigation

- Questions 1- 4
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Summary

- Overview of DoD Military Whistleblower Reprisal Program
 - History
 - Who's covered?
 - What are the guiding statutes and regulations?
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- “Acid Test” for investigations



Who Is a Responsible Official?



Anyone who:

- Influenced or recommended the action be taken
 - Made the decision to take the action
 - Signed correspondence regarding the action
 - Approved, reviewed, or endorsed the action
-



Whistleblower Reprisal Complaints Preliminary Inquiry

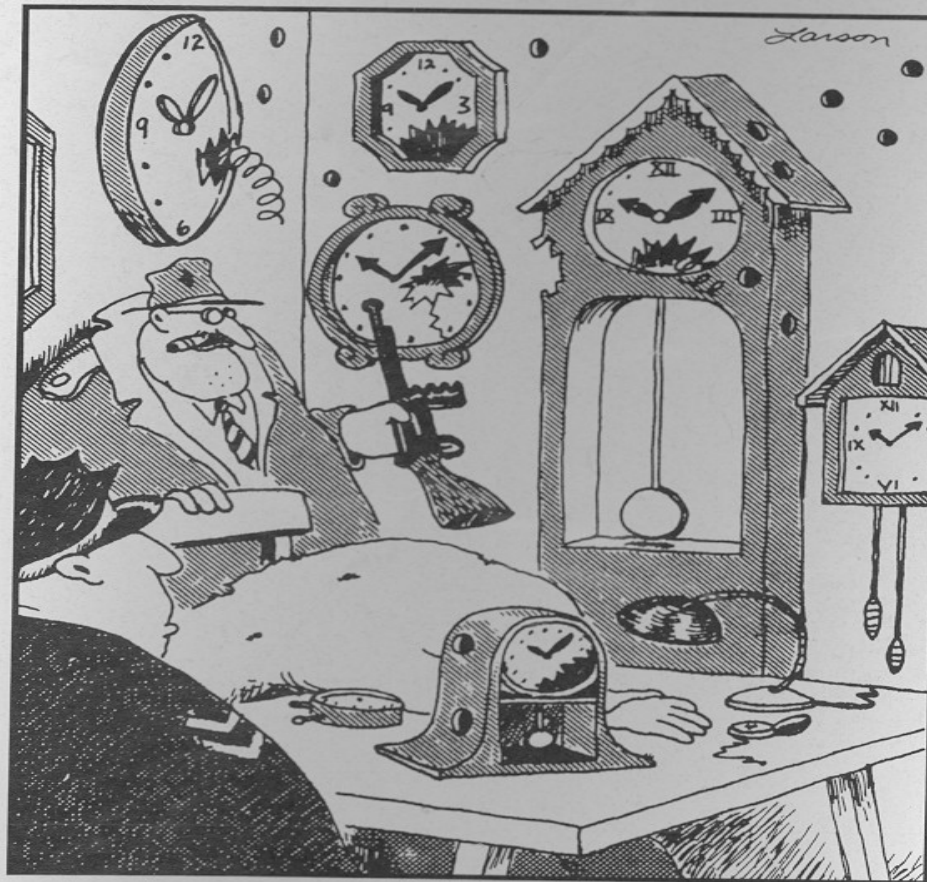
Reprisal

Retaliation

Punishment



***Complaint
Analysis***



"We've got the murder weapon and the motive ...
now if we can just establish time-of-death."

**Combatant Command and Joint
Inspector General Orientation Course**



Preliminary Inquiry



- Questions 1-3
- Findings vs. determination that does not meet the criteria or insufficient evidence to investigate
- Building block for investigation
- Legal review
- Normally do not interview responsible management officials and witnesses during prelim process



Sources of Information

- Incoming complaint
- Personnel Records
- Previous investigations (EO, IG, Congressional, etc.)
- Complainant Interview



Preliminary Inquiry Analysis



- Detailed chronology
 - Question 1
 - Question 2
 - Question 3
 - Does the complaint fit the criteria of 10 USC 1034?
 - Sufficient evidence to pursue full investigation?
-





Record of Preliminary Inquiry



- Report of Preliminary Inquiry/Complaint
 - Analysis
 - Incoming complaint
 - Independent sources of documentation
 - Personnel Records
 - Previous investigations (EO, IG, Congressional, etc.)
 - Complainant Interview
 - Forward up chain of command for review and approval by MRI, OIG DoD
-



Full Investigation

- Interview with complainant, identification of protected communications and unfavorable personnel action (from official sources)
- Interviews with witnesses
- Interviews with responsible management officials
- Analysis of evidence
- Written report of investigation
- Legal Review



DO NOT INVESTIGATE THE COMPLAINANT!!



***Combatant Command and Joint
Inspector General Orientation Course***



Summary

- Role of preliminary inquiry
- Limitations of a preliminary inquiry
- Questions?

Question Four:



Does a preponderance of the evidence establish that the unfavorable personnel action would have been taken absent the protected communications?



Preponderance of the Evidence



Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.



Facts



- **Relevant**
- **Accurate**
- **Comprehensive**
- **Cross check and corroborate**
- **Proper context**



Analyzing the Evidence

- Update chronology
 - Make sure you have all documents
 - Review testimonies (summarized testimonies will assist you in reviewing the evidence)
 - Confirm or rebut complainant's testimony
 - Confirm or rebut responsible official(s) testimony
 - Resolve inconsistencies and contradictions
 - Conduct additional interviews if necessary
 - Determine if actions consistent with past practice
-



Analyzing the Evidence

- Analyze complainant's testimony, actions, and evidence
 - Analyze witnesses' testimonies
 - Corroborate the testimony of the complainant and responsible officials
 - Subject matter "experts"
 - Determine what is credible, what is not, and why
-



Analyzing the Evidence

RMO(s) actions:

- What factors did responsible official(s) consider in taking the action?

It is incumbent on the responsible official(s) to explain the reasons for the actions taken

- Why did responsible official(s) take the action at that particular time?
- What bearing did the protected communication have on the action?
- Are there inconsistencies between the evidence (to include other testimonies) and responsible official(s) testimony?
- Is there evidence of bias against complainant for
“going outside the chain of command?”



Analyzing the Evidence

- Reasons

- Reasonableness

(Was the action reasonable or appropriate for the offense?)

- Procedural correctness

(Did responsible official(s) have the authority to take the action and was action done in accordance with regulation?)

- Consistency

(Were previous problems handled in a similar manner?)

- Motive

(Did responsible official(s) take the *right* action for the *right* reason?)



“The” Finding

■ *Reprisal*

Preponderance of evidence supports reprisal

■ *Not Reprisal*

Evidence supports independent basis for unfavorable personnel action



Report of Investigation

Suggested format outlined in IGDG 7050.6

- Introduction and Summary (conclusion)
 - Background: briefly outline facts leading to unfavorable action
 - Questions 1-3 (protected communication, unfavorable personnel action and knowledge): briefly state the evidence
 - Question 4 (findings and analysis): in-depth analysis of evidence of each personnel action
-



Report of Investigation

Question 4 (cont)

- Resolve any conflicting evidence
 - Just because action was within responsible official(s) prerogative does not establish that reprisal did not occur
 - You may not rule out reprisal until you have established that responsible official(s) would have taken the exact same action even if complainant had not made protected communication (consistency of punishment)
-



Final Report of Investigation



- Documentary evidence
 - copy of the unfavorable personnel action
 - service regulations & policies
 - incoming documents
 - other relevant documents
 - Testimonial evidence
 - complainant
 - witnesses
 - responsible official(s) (anyone who decided, directed, recommended, or influenced the unfavorable personnel action)
-



Final Report of Investigation



- Analysis of evidence for each personnel action
 - Thorough review of relevant facts
 - Evidence must support findings

 - Recommendation
 - Disciplinary action (if reprisal substantiated)
 - Corrective action for complainant (correction of records)
-



Final Report of Investigation



- Must have legal review
 - Legally sufficient
 - "Burden of proof" is on management
 - Preponderance of the evidence
 - Copies of all relevant documents collected
 - Recommendation
 - Legal review
 - Summaries or transcripts of interviews

- Provide IG, DoD with:
 - Complete report, with all supporting documentation



Break



Eventually, the tree
was 100% straight.



Assistance

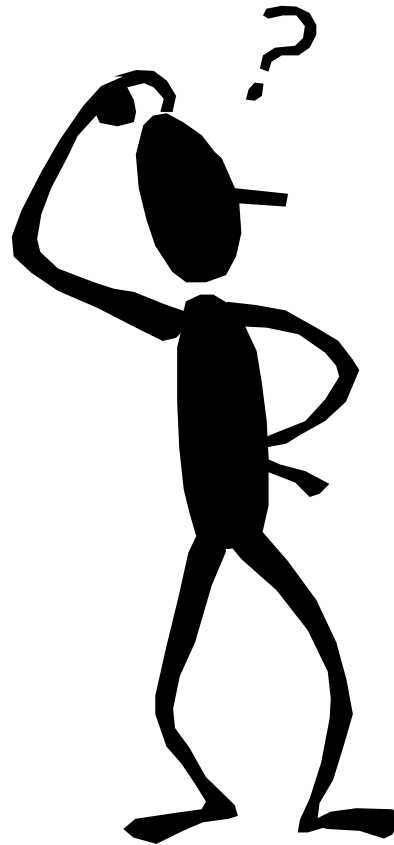
- Use Review Criteria Worksheet (IGDG 7050.6, Figure 2-1)
- Ask your IG for guidance
- Consult with your local JAG
- Call Us If You Have Any Questions

(703) 604-8594, DSN 664



Questions?

Mental Health Evaluations





Enabling Learning Objectives (ELO)



Enabling Learning Objectives:

- Determine the Service Inspector General responsibilities
- Determine whether the complaint is a procedural violation or reprisal.
- Identify and compare the two types of referrals for mental health evaluations.
- Describe the role and obligations of the mental health care provider and the commander during the interview.



Overview

- **Laws and regulations**
- **IG responsibilities**
- **Improper MHE referral statistics**
- **MHE referral requirement**
- **Involuntary hospitalizations**



Laws and Regulations

- Section 546 of Public Law 102-484, “National Defense Authorization Act for Fiscal Year 1993,” October 23, 1992:
 - **Prohibits referring Service members for MHEs in reprisal for making protected communications.**
 - **Required DoD implementing regulations to establish procedures for referring Service members for MHEs.**
-



Laws and Regulations

- **DoD Directive 6490.1**, “Mental Health Evaluations of Members of the Armed Forces,” October 1, 1997
- **DoD Instruction 6490.4**, “Requirements for Mental Health Evaluations of Members of the Armed Forces,” August 28, 1997
- **DoD Directive 7050.6**, “Military Whistleblower Protection,” June 23, 2000

<http://www.dtic.mil/whs/directives>



IG DoD Responsibilities

- **Conduct or oversee investigation of allegations of improper referral for MHEs.**
- **Report to Congress in the Semiannual Report.**



Service IG Responsibilities



- **Report allegations of MHE referral procedures to OIG DoD within 10 working days.**
- **Investigate allegations unless OIG DoD assumes responsibility.**
- **Provide OIG DoD copy of final ROI and written report of disciplinary and/or administrative action taken, if any.**



Allegations of Violation of DoD Directive 6490.1



- **FY 96: 53**
- **FY 97: 57**
- **FY 98: 45**
- **FY 99: 40**
- **FY 00: 34**
- **FY 01: 24**
- **FY 02: 35**
- **FY 03: 44**
- **FY 04: 61**
- **FY 05: 35**



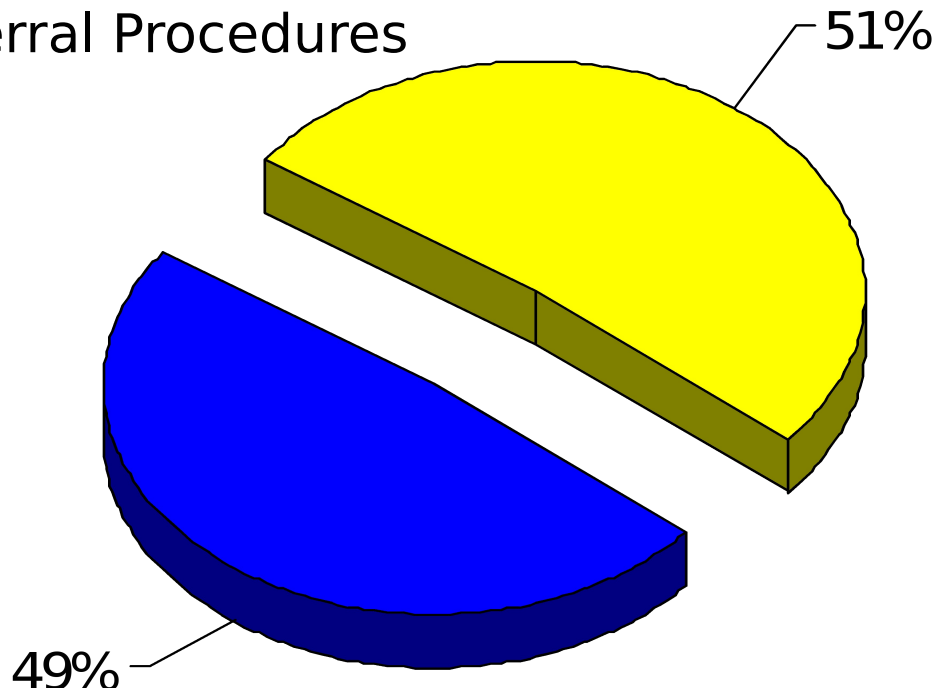
REFERRAL FOR MENTAL HEALTH EVALUATIONS

October 1, 2004 - September 30, 2005

Total - 35 Cases

17 - Substantiated Violations
of MHE Referral Procedures

18 - Unsubstantiated Reprisal
and Procedural Violations



**Combatant Command and Joint
Inspector General Orientation Course**



MHE Defined



DoDD 6490.1 defines MHE as:

“A clinical assessment of a Service member for a mental, physical, or personality disorder, the purpose of which is to determine a Service member’s clinical mental health status and/or fitness and/or suitability for service.”



MHE Referral Requirements



DoDD 6490.1 does not include:

- **Self-Referral (or Voluntary Referral)**
 - **Diagnostic referral by non-mental healthcare provider not in the Service member's chain of command**
 - **Responsibility and competency inquiries (RCM 706)**
 - **Family Advocacy Program**
 - **Drug/alcohol rehab programs**
 - **Evaluations required by Service regulations**
-



Types of MHE Referrals

- **Non-emergency (routine)**
- **Emergency**
 - **Threatening imminently, by words or actions, to harm oneself/others.**
 - **Delay of MHE would further endanger Service member or potential victims.**





MHE Referral Requirements **(Non-emergency)**

➤ **Authority to refer:**



COMMANDING OFFICER ONLY!

➤ **Commanding Officer's responsibilities:**

- **Consult with mental healthcare provider (MHCP)**
- **Send a memorandum requesting MHE to the Commanding Officer of Medical Treatment Facility or the Officer in Charge of Mental Health clinic**
- **Provide the service member referral memorandum including statement of rights member AT LEAST 2 BUSINESS DAYS IN**

ADVANCE

*Combatant Command and Joint
Inspector General Orientation Course*



Service Member Rights

- **Two business day's notice**
 - **Consult an attorney**
 - **Request an IG investigation**
 - **Seek second opinion**
 - **No restrictions to communicate to IG, Member of Congress, attorney, or other person**
-



Service Member's Rights



Important Note:

Commanding Officers are not permitted to offer Service members an opportunity to waive his or her right to receive the written memorandum and statement of rights.



MHE Referral Requirements **(Nonemergency)**



- **Mental Healthcare Provider's Responsibilities:**
 - **Before MHE, determine if referring Commanding Officer followed required MHE referral procedures.**
 - **Advise Service member of purpose, nature, and likely consequences of MHE before evaluation and advise MHE not confidential.**
 - **After evaluation, forward memorandum to Service member's Commanding Officer reporting results and recommendations.**
-



MHCP Findings and Recommendations



- **MHCP's advise Service member's commander on:**
 - **Member's fitness and suitability for continued service.**
 - **Whether separation from Service is recommended.**
- **Commanders who decline MHCP recommendation for separation of Service member must explain decision to their own commander within 2 business days.**



MHE Referral Requirements (Emergency)



- Commanding Officer's first priority is to protect Service member and potential victims from harm!
- **Before referral, try to consult a MHCP or other privileged healthcare provider**
- **Safely get Service member to nearest MHCP, as soon as practical**



MHE Referral Requirements (Emergency)



- **If unable to consult with MHCP before transporting Service member, forward memo to MHCP as soon as practical.**
- **As soon as practical, provide Service member a memorandum and statement of rights.**



Imminent Dangerousness ***Clinical Evaluation of Service Member***

- Service member is at substantial risk of committing acts resulting in:

Serious personal injury or death to himself/herself, another person or persons, or destroying property likely to lead to serious personal injury, or death.

- Privileged, doctoral-level MHCP must make the clinical determination about whether Service member is imminently dangerous.
-



Imminent Dangerousness (Emergency MHE)

- Emergency evaluations for imminent dangerousness must be conducted within 24 hours of initial request.
 - Service member judged to be or may become imminently dangerous may be admitted for involuntary inpatient evaluation.
 - Decision to admit Service member for inpatient MHE or treatment rests solely with MCHP with admitting privileges.
-



Imminent Dangerousness Findings and Recommendations

- MHCP's advise Service member's commander on:
 - Member's fitness and suitability for continued service.
 - Whether separation from Service is recommended.
 - Commanders who decline MHCP recommendation for separation of Service member must explain decision to their own commander within 2 business days.
-



Involuntary Hospitalization



- Involuntary admission:

**Requires clinical judgment by MHCP
that care cannot be less restrictive**

- Voluntary admission:
 - **Clinically indicated**
 - **Service member voluntarily consents**
 - **Service member capacity to make informed decision**
-



Involuntary Hospitalization

Service Member Protections

- Commanding Officer coordinates with MHCP to advise Service member of reason for admission, likely consequences, and Service member's rights.
 - Service member has right to contact relative, friend, chaplain, attorney, and IG after admission.
 - Evaluation required **within 24 hrs** of hospitalization to determine necessity of continued hospitalization.
-



Involuntary Hospitalization (Service Member Protections)

- Notify Service member of reason if continued hospitalization is clinically indicated.
- **Within 72 hrs**, independent review of factors that led to involuntary admission and appropriateness of continued involuntary hospitalization.
- Reviewer determines whether MHE requested or conducted improperly.



Questions?